National Labor Relations Board Weekly Summary of NLRB Cases

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E & I Specialists, Inc. (18-CA-16009-1; 349 NLRB No. 45) Lakeville, MN Feb. 28, 2007. Finding that the General Counsel failed to establish antiunion animus so as to make out either a refusal-to-consider or a refusal-to-hire prima facie case, the Board dismissed the complaint, that had alleged that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to consider for hire or hire 23 individuals because of their union and/or concerted activities.

[HTML] [PDF]

The Board stated: "Not only is there no direct evidence of animus, but there is evidence negating animus. Indeed, an employer's main defense against a finding of antiunion animus is a showing that it actually hired union applicants.... Here, the Respondent hired several union members. We disagree with the judge's finding that the Respondent's hiring of union affiliated applicants Chaplin and Kosbab did not negate a finding of animus because they were hired *after* the Union filed the unfair labor practice charges."

(Chairman Battista and Members Schaumber and Kirsanow participated.)

Charge filed by Electrical Workers (IBEW) Local 343; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Minneapolis Oct. 10-11, 2001. Adm. Law Judge Paul Bogas issued his decision March 8, 2002.

Leiser Construction, LLC (17-CA-23177; 349 NLRB No. 41) Madison, KS Feb. 28, 2007. In this FES case, the Board agreed with the administrative law judge that the Respondent, a nonunion company that performs ironwork in the construction of commercial buildings, violated Section 8(a)(3) and (1) of the Act by discharging David Coleman because of his union activity and by refusing to hire union applicants Michael Bright and Richard Christenson. Regarding other violations found by the judge, the panel was split: [HTML] [PDF]

Chairman Battista and Member Schaumber, with Member Walsh dissenting, reversed the judge's finding that employee Travis Williams was illegally discharged for union activity mainly on the basis that Williams had declared himself to be "on strike" and did not believe that he had been discharged. Member Walsh noted in his dissent: "Over a period of less than 24 hours, Williams was unlawfully suspended and threatened with violence and retaliation for his union activity. The Respondent then unequivocally refused to allow him to work, on the basis that the Respondent '[did not] work with liars.' Under these circumstances, a prudent employee would conclude that he had been discharged."

As for another violation involving Williams, Members Schaumber and Walsh, with Chairman Battista dissenting, affirmed the judge's finding that the Respondent illegally threatened this employee with physical violence because of his union activity. Finally, Chairman Battista and Member Schaumber, with Member Walsh again dissenting, dismissed the judge's finding that the Respondent violated Section 8(a)(1) by prohibiting Williams from displaying a rat sticker on his hard hat.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Iron Workers Local 10; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Overland Park, Jan. 31 and Feb. 1, 2006. Adm. Law Judge Lawrence W. Cullen issued his decision May 3, 2006.

Surgener Electric, Inc. d/b/a McKee Electric Co. (31-CA-27113; 349 NLRB No. 46) Bakersfield, CA Feb. 28, 2007. Members Liebman and Kirsanow held that the Respondent violated Section 8(a)(3) of the Act by failing to consider for employment and/or refusing to hire 15 journeyman electricians because of union animus and ordered instatement and backpay for all 15 unlawfully rejected applicants. Members Liebman and Kirsanow found without merit the Respondent's argument that the Board cannot find unlawful motivation with respect to its failure to hire applicants Tony Cook and Kevin Cole because their resumes did not indicate any union affiliation. [HTML] [PDF]

Chairman Battista, dissenting in part, does not agree that the General Counsel has shown a violation as to Cook and Cole because the evidence does not establish that the Respondent knew that Cook and Cole were union adherents.

The administrative law judge found a violation with regard to the Respondent's refusal to consider the 15 individuals only and failed to order instatement and backpay for Ronny Jungk and Mike Stein who admitted falsifying information regarding their employment history in order to obtain jobs with the Respondent.

(Chairman Battista and Members Liebman and Kirsanow participated.)

Charge filed by Electrical Workers (IBEW) Local 428; complaint alleged violation of Section 8(a)(1) and (3). Hearing held July 11-13, 2005. Adm. Law Judge James L. Rose issued his decision Oct. 19, 2005.

Turner Industries Group, LLC (15-RC-8596; 349 NLRB No. 42) Geismar, LA Feb. 28, 2007. The Board considered the appropriateness of the petitioned-for multicraft unit comprised of boilermakers, carpenters, scaffold builders, ironworkers, laborers, millwrights, painters, pipefitters, welders, and cement masons at the Employer's BASF Geismar, LA facility and decided, contrary to the Regional Director, that the appropriate unit must also include all insulators, electricians, and Daily Support Team (DST) employees excluded by the Regional Director. [HTML] [PDF]

The Board agreed with the Regional Director that the construction industry eligibility formula as set forth in *Daniel Construction Co.*, 133 NLRB 264 (1961), modified at 167 NLRB 1078 (1967), reaffirmed and further modified in *Steiny & Co.*, 308 NLRB 1323 (1992), is appropriate under the circumstances presented in this case, but found it unnecessary to pass on the issue of whether the Employer meets the definition of a construction employer under the Act.

In so doing, the Board agreed with the Regional Director that use of the *Daniel/Steiny* eligibility formula is reasonable, where, as here, the Employer performs more than a de minimis amount of construction work and its work patterns are comparable to a construction industry employer.

The Employer is a contractor that provides maintenance support services for various chemical plants. It has organized its operations into two sections: Alliance Contract Services (ACS) and Daily Maintenance Support, also known as Daily Support Team (DST). The Employer took over maintenance and other work at BASF's Geismar site in late 2004/early 2005.

The Regional Director found appropriate the petitioned-for unit, which encompassed only the historical unit previously represented by the Petitioner, Baton Rouge Building & Construction Trades Council. The Board concluded however that the Regional Director erred in relying on bargaining history as the determinative factor in supporting his unit determination, noting that there is no assertion or finding that the Employer is a successor employer to its predecessor. In addition, the Petitioner abandoned its successorship claim when it agreed to end its contract with the predecessor company in Nov. 2004, and did not seek recognition from the Employer as a successor.

The Board found it significant that the scope and organization of the Employer's operations expanded in Nov. 2004 when it took over all electrical and insulation work being performed at BASF and hired the employees who were performing that work at that time; and that the terms and conditions of employment for all of the employees, ACS and DST, are substantially similar. It found no basis for excluding the craft-employee insulators and craft-employee electricians, while including other craft employees. Also, it found a strong community of interest between DST employees and the other craft employees in the overall unit.

(Chairman Battista and Members Liebman and Schaumber participated.)

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Amersino Marketing Group, LLC (Industrial Workers) Brooklyn, NY Feb. 27, 2007. 29-CA-27623, et al.; JD-13-07, Judge Michael A. Rosas.

Industrial Hard Chrome, Ltd., Bar Technologies LLC, Fluid Power Manufacturing, a Single Employer (Steelworkers) Geneva, IL Feb. 27, 2007. 13-CA-43487; JD-11-07, Judge George Alemán.

CGLM, Inc. (an Individual) Jefferson, LA Feb. 27, 2007. 15-CA-17889; JD(ATL)-08-07, Judge George Carson II.

El Paso Electric Co. (Electrical Workers [IBEW] Local 960) EL Paso, Chelmont, Fabens, and Van Horn, TX, et al. March 1, 2007. 28-CA-20136, et al.; JD(SF)-03-07, Judge John J. McCarrick.

Care Center of Kansas City d/b/a Swope Ridge Geriatric Center (Service Employees Local 2000) Kansas City, MO March 1, 2007. 17-CA-23664, et al.; JD(SF)-08-07, Judge Gerald A. Wacknov.

SK USA Cleaners, Inc. (Journeymen Local 947) Newark, NJ March 1, 2007. 22-CA-26959; JD(ATL)-6-07, Judge William N. Cates.

A.J. McNulty & Co., Inc. (Teamsters Local 282) Maspeth, NY March 2, 2007. 29-CA-27722; JD(NY)-13-07, Judge Raymond P. Green.

Datwyler Rubber and Plastics, Inc. (an Individual) Marion, SC March 2, 2007. 11-CA-21185; JD(ATL)-1-07, Judge Lawrence W. Cullen.

Whitesell Corp. (Glass and Pottery Workers Local 359) Washington, IO March 2, 2007. 18-CA-18143, et al.; JD-15-07, Judge Bruce D. Rosenstein.

TEST OF CERTIFICATION

(In the following cases, the Board granted the General Counsel's motion for summary judgment on the grounds that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

Abbott Ambulance of Illinois (Professional EMTS & Paramedics) (14-CA-28826; 349 NLRB No. 43) Belleville, IL Feb. 28, 2007. [HTML] [PDF]

Atlantic Paratrans of N.Y.C (Transport Workers) (29-CA-27916; 349 NLRB No. 44) Maspeth, NY Feb. 28, 2007. [HTML] [PDF]

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Valley Garbage & Rubbish Co., Inc. d/b/a Health Sanitation Services, Santa Maria, CA, 31-RD-1540, Feb. 28, 2007 (Chairman Battista and Members Liebman and Walsh)

DECISION AND DIRECTION OF SECOND ELECTION

American Red Cross, Arizona Region, Tucson, AZ, 28-RC-6452, Feb. 28, 2007 (Chairman Battista and Members Liebman and Walsh)

Ryder Integrated Logistics, Inc., South Windsor, CT, 34-RC-2175, Feb. 28, 2007 (Chairman Battista and Members Schaumber and Walsh)

DECISION AND ORDER DIRECTING HEARING

Fresenius USA Manufacturing, Inc., Chester, NY, 2-RC-23145, Feb. 28, 2007 (Members Schaumber, Kirsanow, and Walsh)

Miscellaneous Board Orders

NOTICE TO SHOW CAUSE [why the Petitioner's request to withdraw the petition should not be granted] (due 3/14/07)

Laidlaw Transit Services, Inc., El Cajon, CA, 21-RC-20795, Feb. 28, 2007
